

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

LIFE TECHNOLOGIES CORPORATION, Civil No. RWT-10-3527

Plaintiff,

v.

Greenbelt, Maryland

LIFE TECHNOLOGIES CORPORATION, April 19, 2016
et al.,

Defendants. 2:30 p.m.

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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Grenzer, Jr.

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P R O C E E D I N G S

THE CLERK: The matter now pending before this Court is Civil Action Number RWT-10-3527, Life Technologies Corporation, a Delaware corporation versus Life Technologies Corporation, Montgomery County, Maryland, et al. The matter now comes before this Court for a motions hearing. Counsel, please identify yourselves for the record.

MR. GRENZER: Good afternoon, Your Honor. Louis Grenzer on behalf of Life Technologies Corporation. With me is Eric Jaegers.

THE COURT: Good afternoon.

MR. AITKEN: Good afternoon. Andrew Aitken on behalf of interested party, Dr. Krishnamurthy.

THE COURT: All right. Well, glad to hear from the plaintiff.

MR. JAEGER: Thank you, Your Honor. Eric Jaegers from Troutman Sanders on behalf of the plaintiff. And, Your Honor, would you prefer that I sit or stand at the podium?

THE COURT: I don't have a strong feeling about it. What I do have a strong feeling about is I need to hear you. So if sitting there makes it so I can't hear you, I'll probably have to have you go up there. So make sure if you're sitting there, that's fine. But be close

1 to the mic.

2 MR. JAEGER: Yes, sir. Can you hear me okay
3 right now?

4 THE COURT: That's fine.

5 MR. JAEGER: Your Honor, I'm sure the Court is
6 familiar with the history of this case which has spanned a
7 number of years.

8 THE COURT: Yes. It's got some age on it.

9 MR. JAEGER: Yes, it does. And thankfully, we
10 are at the closing bell here as it were in terms of the
11 filings in this case and I will spare the Court any
12 detailed analysis of previous filings in this case to the
13 extent I can and will be as brief as I can today.

14 As to the motion for damages, Your Honor, it
15 took us about four years to get to this point. The
16 summary judgment hearing was March 12th of 2012 and we're
17 slightly past four years today. During the four years, as
18 the Court is aware, we have encountered obstacles with
19 regard to our discovery efforts. The primary obstacles in
20 the post-judgment damages phase discovery was trying to
21 figure out what profits the defendant had made by trading
22 on plaintiff's trademarks and intellectual property. We
23 sought any sales information, any product information, any
24 kind of revenue information. We sought information on any
25 customers or suppliers.

1 We were consistently told initially by Dr.
2 Krishnamurthy that there were no products, there were no
3 sales, there were no customers, there were no revenues.
4 And we started into our discovery with more earnest and
5 subsequently discovered that those statements were untrue.
6 And among the things that we discovered were existence of
7 products, the existence of sales and the existence of
8 customers and suppliers.

9 And, Your Honor, I would refer the Court to
10 exhibit -- as to our motion for damages, Your Honor.
11 Exhibit 5 is a CitiBank exhibit with CitiBank documents in
12 it. And in those documents and I refer the Court
13 specifically to CitiBank 394 and 398. Those are
14 representations from Dr. Krishnamurthy to CitiBank, a
15 lender or a potential lender regarding products, regarding
16 customers, regarding suppliers. And page -- CitiBank 398
17 also lists --

18 THE COURT: What's the Bates number you are
19 referring to?

20 MR. JAEGER: Yes, sir. CitiBank 398.

21 THE COURT: I got it. Yes.

22 MR. JAEGER: Samples of plasmids and this
23 apparently a CitiBank representative had gone to Dr.
24 Krishnamurthy's business and inspected it in connection
25 with an extension of credit. Presumably that's what this

1 was about. Apparently, Dr. Krishnamurthy had a lab set up
2 and he was doing research on cloning of molecular and
3 biologic antibodies, DNA diagnostic kits. Many of the
4 things that the plaintiff is and was intimately involved
5 with.

6 Your Honor may also recall from our 2012
7 contempt hearings on December 10th and December 18th of
8 2012 that we introduced some evidence regarding
9 representations that Dr. Krishnamurthy had made to the
10 USPTO in connection with his trademark applications that
11 were at issue in the underlying litigation that resulted
12 in the summary judgment in March of 2012 where he had
13 submitted applications for "in use" or "in use and
14 commerce" applications and the effect there is that that
15 is a verified representation to the USPTO that the
16 trademarks are being used currently in commerce. And if
17 you'll -- Exhibit 8 to our motion for damages, Your Honor,
18 is a series of pictures, photographs that
19 Dr. Krishnamurthy submitted to the USPTO of his current
20 products. And many of those had actual product numbers on
21 them, dates of manufacture and they list the defendant's
22 address here in Maryland.

23 So that's among the evidence that we discovered
24 and notably, Your Honor, taking a step back, all of the
25 Citibank documents and all of the bank documents in this

1 case, we had to go out and issue 13 subpoenas in this case
2 because we just did not get documents from
3 Dr. Krishnamurthy. We subpoenaed a couple of banks. We
4 looked at those bank records. We discovered additional
5 corporate accounts. We would then subpoena those other
6 banks. And I think ultimately, we ended up subpoenaing
7 HSBC, Bank of America, CitiBank, Wells Fargo and
8 additionally ended up having to subpoena PayPal. We had
9 to subpoena godaddy.com, which is an Internet registrar.
10 A total of 13 subpoenas and those subpoenas -- and again
11 this is because we were not getting cooperation. These
12 were just road blocks that were being constructed by
13 Dr. Krishnamurthy that we had to overcome. We were not
14 getting documents or cooperation. So we had to go the
15 route of the compulsory process of the court. Because he
16 testified under oath in open court here as well as in
17 various declarations that he frankly -- that the defendant
18 never had any sales, no revenues, no customers, nothing.
19 We figured that to be untrue and, of course, the subpoena
20 documents, the CitiBank documents we were just discussing
21 show that that's untrue.

22 In addition, Your Honor, Exhibit 17 to our
23 motion shows representations made by the Krishnamurthys to
24 Wells Fargo of income of \$159,000 in 2008. Exhibit 5,
25 representations to CitiBank of \$150,000 of income in 2005.

1 Exhibit 5 also shows an additional separate representation
2 to Citibank of income of \$25,000 in 2002.

3 Your Honor, the HSBC documents which are Exhibit
4 18 show deposits of about \$75,000 in the defendant's
5 corporate account. Exhibit 16 which are the Bank of
6 America records show deposits in the defendant's corporate
7 account of -- the Bank of America account ending in 1477
8 of about \$61,000. Exhibit 16 also shows deposits into
9 defendant's corporate account at Bank of America, this
10 account ending in 1464 of about \$58,000. A federal tax
11 return that we received by subpoena from
12 Dr. Krishnamurthy's accountants, the defendant's
13 accountants shows about \$44,000 in distributions to Dr.
14 and Mrs. Krishnamurthy, about \$22,000 a piece and that's
15 Exhibit 9.

16 That same tax document, Your Honor, Exhibit 9
17 lists a corporate asset of \$247,000 which is expressed as
18 equipment of some kind and Your Honor may recall I believe
19 it was one of the days of our December 2012 contempt
20 hearing where I questioned Dr. Krishnamurthy about that
21 \$247,000 piece of equipment and he couldn't remember what
22 it was, couldn't remember where he bought it, could not
23 remember what happened to it. These are the kinds of
24 things that we're looking for in our damages-related
25 discovery.

1 And the sum total, Your Honor, of the base
2 profits that we are seeking here is \$837,265.66, not
3 including any enhancements or prejudgment interest. In
4 all of those sources of funds -- well, all of the
5 documents supporting those sources of funds, the wells
6 Fargo documents, CitiBank, everything that I've just
7 mentioned, we never would have seen but for our
8 persistence in this case and we never would have seen
9 those, we never would have seen those in the context of
10 this case if we had relied on Dr. Krishnamurthy to produce
11 them.

12 In, Your Honor, the -- in our filings, we don't
13 have a sales document. We don't have a sales receipt from
14 the defendant or a purchase order or anything from
15 defendant to any other entity. We don't know where we
16 would start to get them, number one, and Dr. Krishnamurthy
17 and the defendant certainly have not produced them to us.
18 And so all of the funds that I've just discussed that make
19 up that \$837,000 figure, the deposits into the bank
20 accounts, the money spent to purchase whatever equipment
21 was purchased for \$247,000, those funds had to have come
22 from somewhere. They didn't just magically appear and
23 because each of these deposits into the bank accounts and
24 everything else, they're into the defendant's corporate
25 accounts. We did not -- we received, but in this motion

1 did not include or reference either Dr. or
2 Mrs. Krishnamurthy's individual bank accounts. We just
3 carved those out. I don't know whether any sales proceeds
4 ever went to those accounts. We're not concerned with
5 them. What we are concerned with are what went into the
6 defendant's corporate accounts. That money came from
7 somewhere.

8 And there is, Your Honor, the cost -- all the
9 plaintiff has to do is put out a reasoned figure of what
10 its damage calculation is, what we think the defendant's
11 profits are and that is our \$837,000 figure which we
12 believe is amply supported by the record with our motion.

13 And it is the infringer's burden to show the
14 evidence of cost of goods sold that might otherwise be
15 deducted from the plaintiff's damage calculation. And if
16 he fails to do that, Your Honor, the plaintiff's
17 profits -- I'm sorry -- the defendant's profits equal the
18 gross sales and that is what we're seeking here because
19 Dr. Krishnamurthy's filings in this case completely fail
20 to show any cost of goods sold that might otherwise be
21 deducted.

22 And, Your Honor, since the case law that we've
23 cited, some from the District of Maryland, others from
24 various district courts around the country, there is an
25 overriding, there's an overriding principle that

1 recognizes that the defendant is in the best position,
2 sometimes the only position to show sales. And, Your
3 Honor, I just will mention a couple of quotes from our
4 briefing that because the plaintiffs often do not have
5 access to sales information, courts require plaintiffs
6 only to show evidence of a reasonable estimate of the
7 defendant's sales. Plaintiff may also use indirect proof
8 to show the defendant's gross sales because the defendant
9 is in the better position to ascertain what those sales
10 and profits are.

11 And when a defendant frustrates the proof of
12 damages either by withholding facts or just through sloppy
13 or bad record keeping, any doubts about the actual
14 assessment of damages will be resolved against the
15 defendant and the Court may calculate the damages at the
16 highest reasonably ascertainable value. And, Your Honor,
17 that is a quote from the Polo Fashions versus Rabon or
18 Rabonne case, 661 F.Sup. 89, pinpoint cite, page 97.

19 And so, Your Honor, what we have in that
20 \$837,000 is our reasonable estimate of the defendant's
21 sales in this case. Obviously, Dr. Krishnamurthy is in
22 the better position to either, A, show what the cost of
23 goods sold are or, B, show us where the sales documents
24 are and, of course, he did neither. And in his briefing,
25 he does not attempt to back off of our figure whatever --

1 it was some kind of deduction. Utterly fails to do that.

2 And so, Your Honor, going back to what I said a
3 moment ago, all of the funds into and out of those bank
4 accounts, there are tens of thousands of dollars into the
5 defendant's corporate bank accounts and these are the
6 accounts -- we asked Dr. Krishnamurthy under oath where
7 does the defendant have bank accounts and he gave us a
8 couple of bank accounts which are banks which we
9 immediately subpoenaed. And of course, those banks showed
10 absolutely nothing. But then we -- and those were his
11 personal accounts and then we found out that the defendant
12 actually had this whole slew of other corporate accounts
13 that Dr. Krishnamurthy never told us about and that's
14 where all of this came from. The representations on
15 credit applications to Wells Fargo and Citibank, all of
16 the tens and thousands -- I think it's close to \$200,000
17 of deposits into these bank accounts.

18 And interestingly, Your Honor, you may recall
19 that there's been even back in December 2012 during our
20 hearing on the first motion for contempt in this case,
21 there's a lot of discussion about the -- what we've termed
22 the related entities which are entities that
23 Dr. Krishnamurthy has in India. He initially confessed to
24 one of them. Plaintiff's Indian counsel subsequently
25 unearthed about 14 additional entities in India that

1 listed exclusively Dr. Krishnamurthy and his wife as the
2 sole owners, shareholders and directors.

3 And those entities, the importance of those
4 entities, Your Honor, finally became clear through our
5 subpoenas because if Your Honor will look at the wells
6 Fargo -- well, any number of the documents, but our point
7 the Court specifically to wells Fargo, which is Exhibit
8 17, Your Honor. For example, page -- wells Fargo 024.
9 And that is a document dealing with a checking and savings
10 statement where Life Tech, Aqua Life and Life Therapeutics
11 are listed as D/B/As of the defendant corporation. Those
12 three companies, Life Tech, Aqua Life and Life
13 Therapeutics are three of the related entities. So those
14 related entities in India are here in the State of
15 Maryland conducting business or the defendant is here in
16 the State of Maryland conducting business under their
17 names.

18 And so, Your Honor, in fact, Your Honor, I would
19 also refer you to wells Fargo 095 which is a wells Fargo,
20 a clip from a wells Fargo --

21 THE COURT: What's the exhibit number? Give me
22 the exhibit number and then the Bates number.

23 MR. JAEGER: Oh, I'm sorry. Exhibit 17.

24 THE COURT: 17. Okay. And the Bates number
25 again?

1 MR. JAEGER: Wells Fargo 095.

2 THE COURT: Okay.

3 MR. JAEGER: And that is an actual bank
4 statement from the defendant, Life Technologies
5 Corporation also D/B/A Life Tech, D/B/A Life Therapeutics
6 and D/B/A Aqua Life. And so, Your Honor, all of the funds
7 that we've identified and for which we seek -- the
8 plaintiff believes they are profits. This money had to
9 have come from somewhere and there's no rational
10 explanation that we've heard that explains where this
11 money came from. It had to have come from somewhere.
12 It's our position that its profits from sales. And
13 Dr. Krishnamurthy has offered no explanation for any of
14 the funds that we're talking about.

15 And, Your Honor, I would just by way of a very
16 brief example, if you look at Exhibit 18 which is HSBC.
17 It's a statement from the HSBC bank account for the
18 defendant and I'd refer the Court specifically to Bates
19 Number 177.

20 THE COURT: This is exhibit?

21 MR. JAEGER: 18.

22 THE COURT: 18. 177. Okay. I've got it.

23 MR. JAEGER: And that is a Life Technologies
24 Corporation bank statement. And if Your Honor will look
25 down, \$20,000 deposit and then a \$20,000 debit to Life

1 Therapeutics. Right on down from that, there's a \$10,000
2 deposit and on down is another \$10,000 deposit. And then
3 under the checks and other subtractions, you've got a
4 thousand-dollar withdrawal and a \$19,000 withdrawal and
5 the \$19,000 withdrawal is also -- looks to be a debit from
6 Life Technologies Corporation for the benefit of Life
7 Holdings, Limited in Valor, India which is yet another of
8 the related entities.

9 And so, Your Honor, the point being is that
10 these are tens and thousands of dollars. I think the
11 total net of deposits just into the bank accounts is
12 around \$200,000. Where did this money come from? It had
13 to have come from profits, sales. Some source generated
14 the funds that are in these accounts and there is no
15 explanation of it. Plaintiff seeks those because they
16 went into the defendant's corporate accounts. We seek
17 those as damages.

18 And, you know, it was -- it's
19 Dr. Krishnamurthy's and the defendant's obligation to
20 rebut the presumption that the funds are entirely
21 attributable to the defendant's infringing sales. And,
22 Your Honor, I cite to -- one of the cases we cited in our
23 briefing is Interstellar Starship Services versus Epix and
24 it's a District of Oregon case that calls out exactly what
25 we're talking about. That the plaintiff must meet only a

1 minimal burden to trigger the rebuttable presumption that
2 the funds are entirely attributable to infringing
3 activity.

4 Not only has he not successfully rebutted that
5 presumption, Your Honor, there's been virtually no effort
6 to rebut it or even address it. And in plaintiff's view
7 anyway, this failure is an implicit acknowledgment that
8 the funds represent sales.

9 He's had every chance to explain. He's had
10 every chance to come up with documentation saying no,
11 plaintiff, you're wrong, this is where these moneys came
12 from. I think variably he in his opposition to our
13 motion, Your Honor, he claimed that he made loans to the
14 defendant. But if you'll look at our briefing at pages 3
15 and 4 of our reply, you'll see -- and if you look at the
16 documentation, Your Honor, the statements and
17 documentation that Dr. Krishnamurthy put forward are for
18 putative loans to I guess to the company he claims. But
19 those are in 2009.

20 And if you'll look back at our bank statements
21 such as the HSBC document that we're just looking at of
22 these tens of thousands of dollars entering the accounts,
23 that's 2008. So if all of these deposits, tens and
24 thousands, hundreds of thousands of dollars going into
25 these bank accounts in 2008, what difference does it make

1 if he claims that he made the loans to the company in
2 2009? The loans can't explain the funds.

3 So, Your Honor, did you have any further
4 questions about our evidence?

5 THE COURT: No. I think you've adequately
6 covered it. You've also got a motion for attorney's fees
7 and let me hear you on that.

8 MR. JAEGER: Yes, sir. Yes, sir. Absolutely.

9 Your Honor, at every opportunity in this case,
10 the defendant and the Krishnamurthys have thwarted the
11 plaintiff's discovery efforts. They have ignored the
12 rules of discovery. They have ignored, flatly ignored
13 multiple orders from this court which as the Court is
14 aware resulted in two motions for contempt, both of which
15 the Court granted. They've refused to produce relevant
16 and material damages related documents. Dr. Krishnamurthy
17 has testified untruthfully, certainly in our view. But I
18 think the Court's previous statements in this case, you
19 know, justify our claim that it's been dishonest
20 testimony.

21 But every single step of the way, we have been
22 met with obstacle after obstacle after obstacle simply in
23 pursuit of damages related discovery and this is not --
24 should not have been brain surgery. It should not have
25 lasted four years. It should not have required 13

1 subpoenas. It should not have required -- I think we had
2 15 extensions of the discovery period and I think we had
3 10 or 12 status conferences with Magistrate Judge
4 Connelly. And as a direct and proximate result of that
5 misconduct, plaintiff's fees and costs have been
6 needlessly compounded and increased. Two motions to
7 compel, two motions for contempt, three days of
8 evidentiary contempt hearings we had to attend. I had to
9 fly here again. This is my sixth trip here on this case,
10 Your Honor, and the fifth one in the post-judgment phase
11 of this case. But I had to fly here and attend an
12 evidentiary discovery hearing. I mentioned the subpoenas
13 and the status conferences and the extensions.

14 And the Court may recall that, you know, the
15 plaintiff -- that Dr. Krishnamurthy refused to give up a
16 single email in this case. And we figured that with all
17 of his related entities doing business here in the United
18 States, since he was not producing sales documents to
19 support our damages, we wanted his emails because we felt
20 like those emails would be revealing in the context of the
21 damages that we were seeking to prove.

22 Not only did he not give us a single email, but
23 he forced us to go to his email service providers like
24 Yahoo and Google to try to get those emails. And it took
25 us over, it took us over a year to get to the point where

1 Dr. Krishnamurthy finally signed the email consent forms
2 that ultimately we submitted to Google and Yahoo and
3 Hotmail and his employer. And Your Honor may recall that
4 that was the -- that Judge Connelly ordered him to sign
5 the consent forms. He refused. Filed objections. Your
6 Honor I believe on March 4th of 2014 overruled those
7 objections. Ordered Dr. Krishnamurthy to sign the consent
8 forms and he still refused. So we filed our second motion
9 for contempt, which took another six months and finally,
10 Dr. Krishnamurthy after the Magistrate Judge Connelly
11 granted our second motion for contempt and Your Honor, Dr.
12 Krishnamurthy appealed that to you. You overruled his
13 objections and finally in about -- I can't recall, but I
14 want to say September or October of 2014, he signs the
15 email consent forms. We had cooperation from Yahoo and
16 Hotmail and his employer. Google, however, was not as
17 cooperative.

18 And, Your Honor, you may recall part of our
19 search was -- part of our discovery efforts was to find
20 out, okay, what is the universe of email accounts that Dr.
21 Krishnamurthy has used in connection with his business.
22 And, Your Honor, I would refer you to -- there is a list
23 in our motion for attorney's fees at page 9 of our motion.
24 There's a chart on page 9 that extends over to page 10.

25 THE COURT: Memo or the exhibit?

1 MR. JAEGER: I'm sorry. The actual memo in
2 support of our motion for fees.

3 THE COURT: Page 9?

4 MR. JAEGER: Page 9. Yes, sir. And it does
5 not have an ECF number on it because it was filed under
6 seal. But you should see a chart beginning on page 9.

7 THE COURT: Okay.

8 MR. JAEGER: And on the left are the emails
9 that Dr. Krishnamurthy told us under oath was the universe
10 of his emails. And on the right, spilling over onto page
11 10 is the list of email addresses that we located for
12 Dr. Krishnamurthy through our subpoenas. And you'll note
13 that the first 18 are Gmail addresses.

14 And so Google -- and I won't go into the
15 details, Your Honor, but the details are addressed in our
16 pleadings in this case with this motion and also in
17 previous ones. But basically Google refused to cooperate
18 in terms of giving us the actual content of the emails.
19 It was their position supported by various case law around
20 the country that the Storage Communications Act, the SCA
21 did not require them to do that.

22 Notwithstanding that, Your Honor, the point is
23 that all of these email addresses, we had to -- we knew
24 about a couple of them. When we subpoenaed some of the
25 banks, we found out a few more. When we subpoenaed Paypal

1 and Godaddy.com which is the Internet registrars, we found
2 out or discovered a whole bunch more and then finally when
3 we subpoenaed Google, they gave us several more.

4 And so the point, Your Honor, is that when
5 Google decided or when Google told us, you know, we'll
6 give you the header information, but we're not going to
7 give you the content of the emails, in fact, Your Honor,
8 you know, I believe it is Exhibit 18 is the Google -- I
9 believe that's exhibit -- yes, sir. No. Actually, Your
10 Honor, it's Exhibit 17 to our fee motion. It's a lot of
11 the documents in that Google exhibit are just a jumbled
12 mess of what appears to be nonsense. That's all Google
13 would give us.

14 And the point, Your Honor, is that Google came
15 back to us and said if you'll get Dr. Krishnamurthy to
16 send us the passwords for his Gmail accounts, we'll be
17 happy to give you whatever is in there. Well, Dr.
18 Krishnamurthy, of course, said he couldn't remember any
19 passwords to the subject ones. And, Your Honor, the
20 reason that is important is that if you'll check Exhibit
21 19 and keep Exhibit 17 open as well, the documents we
22 ultimately got from Google showed that -- well, take a
23 step back, Your Honor. Exhibit 19 to our fee motion, in
24 April of 2015, Dr. Krishnamurthy told the Court that he
25 couldn't recall passwords for these email accounts and

1 that's where we met the deadend with Google.

2 And if you'll look at Google, Exhibit 17 and
3 look at the Bates numbers, the Google Bates numbers 1155,
4 1442 and 1448, you'll see that with regard to that
5 particular email account, he was using that account in May
6 of 2015. So to Magistrate Judge Connelly and to me it's
7 revealed that he can't recall the passwords as of
8 April 2015. And that's what Exhibit 19, the email to the
9 Court is about. And yet, Exhibit 17 which we got from
10 Google shows he was using the accounts as late as May.

11 So these are the roadblocks that we've been
12 running into, Your Honor, and Your Honor will also recall
13 I'm sure that part of the motion, the first motion for
14 contempt in this case dealt with Dr. Krishnamurthy's
15 continuing to use domain names that involve -- that were
16 prohibited under the Court's March 13, 2012 injunction
17 order in this case. And you'll recall, Your Honor, that
18 we identified some 30 domain names that Dr. Krishnamurthy
19 had continued to use and the Court did find him in
20 contempt in December of 2012 based on his continued -- he
21 was maintaining them. He was transferring them away from
22 himself to his Indian partners or to maybe alternately to
23 himself under a physical address located in India. And,
24 of course, all of that was denied.

25 And yet, here is what we have. In fact if Your

1 Honor, I'm -- within our fee motion, I'm referring to
2 pages 7 and 8 of the actual memorandum, but I'll refer the
3 Court specifically to godaddy.com. It's Exhibit 9. And
4 the Court can see the citation there on the pages 7 and 8
5 of our briefing. But it is Dr. Krishnamurthy, taking at
6 the bottom of page 7 of our briefing. Dr. Krishnamurthy
7 named Krishna here at 301-789-2988 which is a phone number
8 that we've associated with Dr. Krishnamurthy trying to
9 transfer one of his domains. And, Your Honor, this is a
10 month and a half after your order of March 13th. And if
11 you'll switch over to page 8 at the very top under that
12 same entry that we were just talking about, ADV, which I
13 take to mean advised that he changed the contact
14 information on March 27th. And these are all documents,
15 Your Honor, that we did not have in our first motion for
16 contempt. We didn't have these documents I believe for
17 like another year.

18 But notwithstanding that, go down to the next
19 entry there toward the top of page 8, referencing Go Daddy
20 Bates number 653. Krishnamurthy at the same phone number
21 called for help with Lifetechlab.com Transfer. He's
22 entering an off code at Gaining Registrar. So he's
23 transferring it to some other registry away from Go Daddy
24 and the screen freezes and it goes on where advised
25 contact gaining registry.

1 Moving down to Go Daddy Bates number 657.
2 Krishna and that phone number is also associated in this
3 case with Dr. Krishnamurthy. "Customer called in needing
4 to know how to get his emails in his Gmail."
5 Dr. Krishnamurthy called in needing to know how to get his
6 emails in his Gmail account. These are the same emails
7 that we wanted in this case. I'm sure there are many,
8 many others that we wanted as well. But these are the
9 same emails that he said he was deleting. He didn't have
10 them.

11 So I don't know, Your Honor, what else the
12 plaintiff could have done and, Your Honor, this is a
13 buildup to our -- the theme here which is these fees.
14 This enormous amount of work that the plaintiff did in
15 this case were the direct and sole result of the road
16 blocks just like this, just like I've been discussing.
17 The road blocks that have been put up in this case time
18 after time after time. And we don't have any other option
19 but to spend time and money in incurring fees on
20 subpoenas, coming to hearings. And none of this or at
21 least an extremely small percentage, none of that would
22 have been necessary with the cooperation of Dr.
23 Krishnamurthy.

24 And I find it interesting that the papers that
25 Dr. Krishnamurthy filed to say that the fees are

1 completely out of line because this is way beyond what an
2 average or simple case might be. There's nothing average
3 or simple about this case. And, Your Honor, the fees in
4 this case are -- if you had asked me back -- in fact, Your
5 Honor, back in March of 2012, you asked me, well, Mr.
6 Jaegers, how much time do you think you'll need for
7 discovery and I said, Your Honor, assuming there's
8 cooperation, I don't see the need for more than a few
9 months. Well, we're four years down the road now and, of
10 course, these fees are more significant than they might be
11 in an otherwise normal average or simple case. I was
12 thinking of a normal, average simple case when I was
13 thinking that we might be able to get this done in a few
14 months.

15 But notwithstanding that, Your Honor, given what
16 we have had to do in this case just to get to the point
17 where we have some evidence of sales and profits, the fees
18 here are proportional to what we have found. The fees are
19 I believe about \$550,000 that we're claiming and the
20 damages that we are seeking are \$837,000. The base damage
21 is not including the enhancement that we've requested
22 also.

23 And, Your Honor, I'm not going to take more than
24 another minute or two, but I would like to go back to the
25 issue of that enhancement back for our -- in our first

1 motion for damages. Your Honor, the case law and
2 specifically, the very recent 2015 Georgia-Pacific case
3 that we cite quite a bit in our briefing. Under Section
4 1117(b) as in boy, the Court can treble -- the Court must
5 treble the damage award if the infringer intentionally
6 used a counterfeit mark knowing that it was counterfeit.

7 well, Your Honor, back in 2012, the March
8 hearing, Your Honor, you noted the sameness between the
9 mark that the defendant and the Krishnamurthys used and
10 the plaintiff's mark and I refer the Court specifically
11 and it's included in Exhibit 20 to our damages motion,
12 page 43 of the transcript, specifically lines 12 through
13 14 where Your Honor is talking about the sameness of the
14 marks and you said "it's not close; it's exactly the same
15 name as the name of the plaintiff." It is a counterfeit
16 mark and they knew it was a counterfeit mark. They knew
17 that it was a counterfeit mark because, Your Honor, not
18 only is it identical, but one of the trademark
19 applications that they applied for and we did not sue
20 under this other mark. But the defendant definitely knew
21 about the plaintiff because one of the previous marks
22 belonged to plaintiff -- an older mark of plaintiff is
23 virtually identical to another mark that the defendant and
24 Dr. Krishnamurthy applied for. So they knew about us.
25 They knew who the mark belonged to. But even so -- they

1 knew who it belonged to. But they don't have to know that
2 plaintiffs mark was registered on the principal register.
3 Now, of course, plaintiff's mark is and was registered on
4 the principal register. But that knowledge is not
5 required by the statute. All that the plaintiff has to
6 show is that it was a counterfeit mark, which it was and
7 that the defendant used it knowing that it was a
8 counterfeit. There is no question that the defendant and
9 the Krishnamurthys knew that they were using just a
10 copycat counterfeit mark.

11 So, Your Honor, I think an enhancement under
12 1117(b) is appropriate, a treble damage enhancement is
13 appropriate under that particular section. But even if
14 the Court does not find 1117(b) applicable here, it can
15 still make an upward adjustment under 1117(a). And we
16 would request -- we would request a trebling under 1117(a)
17 to the extent that it's not done under Subsection B.

18 Your Honor, we would also as we've discussed in
19 our briefing request that any award under our motion for
20 damages and any award under our motion for fees come in a
21 joint and several order applicable to defendant,
22 applicable to Dr. Krishnamurthy and applicable to Mrs.
23 Krishnamurthy who is an officer of the company. And, Your
24 Honor, in our -- specifically with regard to our motion
25 for fees, if you'll move back there, Your Honor, there is

1 Mrs. Krishnamurthy. Dr. Krishnamurthy has tried to carve
2 out his wife from this case saying she's in India and
3 she's never here. And we've never heard a peep from her
4 even though we have served her by mail with every single
5 filing that we've made in this case. We've not had an
6 opportunity to learn much about her. But she was a
7 signatory on checking accounts.

8 And, Your Honor, I would refer the Court to --
9 actually, Your Honor, I would like to pick the specific
10 citation up after Mr. Aitken has a moment to talk. I
11 can't put my fingers on that right now, but I will come
12 back to it.

13 Mrs. Krishnamurthy has a corporate Life
14 Technologies credit card that she was using as late as
15 November of 2013. Not only after the Court's March 12th
16 order from 2012 or March 13th order from 2012, but she's
17 using this credit card apparently continuously at least as
18 of late 2013.

19 So she is involved. She has her hands in this.
20 She's signed documents. Signed a lot of checks. Wrote
21 checks on behalf of the defendant to various entities. I
22 know that she was paying checks to the defendant's
23 accountants off of corporate accounts. So our point is
24 she is involved in this case. And back in on March 12th,
25 our hearing on March 12th of 2012, Your Honor, you

1 withheld judgment on whether Mrs. Krishnamurthy was going
2 to be involved. At least I believe, Your Honor, it may
3 have been December 18th of 2012, our first contempt
4 hearing. I'm sorry. You withheld judgment about whether
5 she was going to be subject to any penalties or fines.
6 And so that is still open and we request as we've
7 requested in our filings here that she be included jointly
8 and severally along with Dr. Krishnamurthy and the
9 defendant. And, Your Honor, if you don't have any
10 questions of me right now, I'm happy to pass it to Mr.
11 Aitken.

12 THE COURT: All right. Let me hear from Mr.
13 Aitken. You may proceed, sir.

14 MR. AITKEN: Thank you, Your Honor. It might
15 have been easier to do it motion by motion, but I'll try
16 to turn back the clock a little bit. I want to initially
17 actually refer you to Exhibit 9 of plaintiff's motion for
18 damages because I think --

19 THE COURT: Which motion?

20 MR. AITKEN: This is plaintiff's motion for
21 damages.

22 THE COURT: Okay.

23 MR. AITKEN: Exhibit 9. And this is a copy of
24 the Life Technologies Tax Return. And throughout this
25 entire proceeding has -- the plaintiff has continuously

1 argued that this tax return shows some sort of profits or
2 income going to the Krishnamurthys. I don't know if it's
3 just purposeful ignorance of the plaintiff or a deliberate
4 attempt to mislead the Court. But throughout this return,
5 there is a negative before the distribution. I'm looking
6 at Bates number Payne Mouldon 000136. It says
7 distribution, negative 43,916. Now a negative
8 distribution reflects a loss. Yet, somehow the plaintiff
9 decides, well, that's income to the Krishnamurthys and
10 they're somehow making money off of this. We have brought
11 this to their attention multiple times and they either
12 don't understand their mistake, which I seriously doubt.
13 They are very sophisticated litigants here or they're
14 purposely trying to mislead the Court.

15 And I'm going to walk you through a number of
16 examples that are exactly similar to this. They also
17 count as income to the Krishnamurthys on this same page
18 and it's part of how they add up to their \$800,000 worth
19 of sales. I'm going to get to that in a second. And
20 that's other investments and that's on page 137, 00137.
21 Line Item 9, \$247,000. Dr. Krishnamurthy explained that
22 this was a capital expenditure purchased by the company
23 and it was lab equipment. When he went out of business,
24 he lost everything including his equipment that he had
25 purchased. It was never put into service as the

1 accountant also reflects. Yet, the plaintiff is perfectly
2 comfortable representing to this Court that this reflects
3 income and not just only income, it reflects sales made by
4 the defendant company. There's nothing whatsoever that
5 would give any inkling that this is a sales expense. Yet,
6 they juice up their claim by adding a capital expenditure
7 of lab equipment. They're fine. But we'll just call that
8 income and we don't care about the actual facts here. So
9 there's \$300,000 that you should knock off that \$800,000
10 claim just out of the blocks. It's not even, it's not
11 even a matter of debate. It's not even an argument this
12 can any way become income.

13 They go to great lengths at looking at -- well,
14 let me back up. I'm going to -- let's -- from the start.
15 But it's just a fantasy that these people are claiming
16 that there was any sales revenue because they have pointed
17 to none and they do this Texas two-step or whatever and
18 claim that all revenue is sales. Well, that's sort of a
19 basic economic principle that's also incorrect. Revenue
20 coming to this company throughout its life was investment,
21 investment that Dr. Krishnamurthy made in this company and
22 tried to get it to become a going concern. But if you
23 look at the tax returns, these investments were tracked
24 and their accountant showed how it consistently lost
25 money.

1 We have provided the tax returns that Dr.
2 Krishnamurthy had which didn't go back to 2002 early on in
3 this case. But it showed a summary of all revenue earned,
4 all sales earned and it's unequivocal. Yet, somehow the
5 plaintiff is claiming that he must have lied to the I.R.S.
6 and they're hiding all this income from sales from their
7 accountant. At this point he was trying to make a
8 business successful. Yet, he repeatedly reported
9 absolutely no income except for \$25,000 that was
10 attributed to web income. Now back --

11 THE COURT: Trying to give tax returns biblical
12 significance in terms of the truthfulness of what's
13 contained in them?

14 MR. AITKEN: Well, if you want to -- I mean I
15 understand. You can throw the tax returns out. But are
16 you going to pick and choose what evidence you're going to
17 rely upon, but not the tax returns which were done by a
18 CPA?

19 THE COURT: Your client hasn't exactly given the
20 plaintiff a smorgasbord of helpful information, has he?

21 MR. AITKEN: The client didn't have helpful
22 information. This was an operation that was essentially
23 run from his kitchen table. It was not a going concern.
24 He was doing the best that he could, but he was full time
25 employed the entire term of this alleged business he was

1 running where according to the plaintiff he was making
2 hundreds of thousands of sales every year. The fact is he
3 was running out of his residence. He had no, you know,
4 you can ask as many times as you want for sales documents,
5 but he wasn't making sales and that's why he didn't have
6 sales documents. You can ask for as many times for vendor
7 documents, but Dr. Krishnamurthy didn't have any. And
8 that frankly, if he had any, that he would have thrown
9 them out when his business essentially went under in 2010
10 where he essentially went inactive at that point. But up
11 until 2010, he was still trying to make this a successful
12 business.

13 At the end of the day, they haven't shown any
14 actual sales. Rather they show various banking
15 transactions which do not equate with sales. And as Dr.
16 Krishnamurthy has explained, that was his own personal
17 continuing investments in this company. Dr. Krishnamurthy
18 was working for -- as a doctor for the Armed Services
19 Medical School. He was making \$150,000 a year. And he
20 was continuing to invest in this venture hoping that it
21 would succeed. But it did not succeed obviously and as
22 the tax returns continued to show. I mean Dr.
23 Krishnamurthy now is -- his house is in foreclosure. He
24 has no funds and he has a lot of debt. The very documents
25 that plaintiff cites that they argue show culpability are

1 Dr. Krishnamurthy is seeking loans. He's seeking loans
2 because he doesn't have income to continue to make this
3 company successful.

4 So he goes to a CitiBank or HSBC and he asks for
5 loans and when he goes in there, admittedly he shades the
6 truth. He says oh, well, I'm making money here. But he
7 actually does it in a way in most instances where it's
8 true, where he commingled his actual salary that he's
9 making at his various jobs and using that as a surrogate
10 for the company and he's seeking loans. He's seeking
11 loans because he doesn't have the capital to continue to
12 proceed.

13 At the end of the day, they have not --
14 plaintiff has not shown a single sale. They've used a
15 presumption that was actually here at the earliest date.
16 It's a public record of the trademark office where there
17 was a representation made to the trademark office that
18 certain products were made in commerce. Technically that
19 was made by -- was not made by Dr. Krishnamurthy. It was
20 made by his counsel. But he has to live with that
21 representation and we understand that. You found that
22 that constituted infringement. But it doesn't create
23 sales that never existed. That's a judicial inference
24 just like all the other inferences that the plaintiff is
25 trying to request that you take today.

1 Mr. Jaeger went to some length in looking at the
2 Go Daddy -- well, I'm going to get -- I'll wait to the Go
3 Daddy. But I just -- once again, I'm almost at a loss
4 that here's Dr. Krishnamurthy, trying to seek his Gmail
5 accounts from Go Daddy. The documents that they're citing
6 are Dr. Krishnamurthy asking them, how can I obtain these
7 emails from Go Daddy? The plaintiff then somehow blames
8 them for, hey, how come you didn't give us the Gmails.
9 Here he is seeking to get the emails from Go Daddy. He's
10 unsuccessful. It shows he doesn't have access. And he's
11 trying to cooperate and he's unsuccessful. That's why
12 he's not giving the old emails to plaintiff's counsel.
13 It's not some big conspiracy. He's actually trying to
14 cooperate and they try to turn that on its head as somehow
15 being uncooperative.

16 The same example is he identified four or five
17 emails that he used. They come back and say, well, he
18 must be misleading because he has 37 emails. Well, Dr.
19 Krishnamurthy didn't answer that he used 37 emails. He
20 answered the question how many he used, which was three or
21 four. These 37 accounts as we've explained numerous
22 times, but the plaintiff likes a good story to tell the
23 Court, that he must have been using 37 emails constantly.
24 Yet, they don't produce any of these emails from these
25 accounts. That's because they set these email accounts up

1 when you sign up for a web page. It doesn't mean you use
2 the emails. They just exist. They are dormant accounts.
3 He has no idea if there's any activity on it one way or
4 the other. He's not using it. He tells counsel that he's
5 using these four or five. He actually gave them the
6 password for the email that he primarily uses. The
7 plaintiff did not want Dr. Krishnamurthy to retrieve his
8 own emails because they did not trust him. So they went
9 out and they decided they would subpoena every single
10 potential email account there ever was under the sun. It
11 just doesn't make any sense that anybody would use 37
12 emails. And it's incredulous that they make the argument
13 that, well, he must be hiding all sorts of relevant
14 information in these email accounts where he gave the ones
15 he actually used. It was three or four like any normal
16 individual used. Three or four emails.

17 Getting to the various -- well, I'm going to
18 proceed to the four elements of the damages. One were the
19 credit applications. The credit applications do not prove
20 that he made any sales. It proves that he represented to
21 a bank that he made a sale. That's not --

22 THE COURT: I'm not supposed to believe that?

23 MR. AITKEN: Put it into context.

24 THE COURT: A moment ago you told me I should
25 believe what's on a tax return. But now you're saying

1 that I should not take into account what he puts on a
2 statement he made to a bank.

3 MR. AITKEN: well, the statement of account,
4 he's trying to get credit for the bank.

5 THE COURT: But it's all right to lie to a
6 creditor, but not all right to lie I.R.S.?

7 MR. AITKEN: I'm not making excuses for that.
8 But those credit applications also reflected sales of not
9 just Life Technology as defendant. But it also used his
10 own individual income which he was including in those
11 credit applications. And as you know, Your Honor, these
12 banks require personal guarantees for these loans anyway.
13 So he's using his own income to try to seek financing.
14 That doesn't mean that there were sales. He's suggesting
15 to these people that he intends to makes sales. These are
16 where the business that he intends to operate under.

17 They also look at the banking activity and the
18 banking activity once again is not a reflection of sales.
19 A deposit into a bank account is not a reflection of any
20 sale. Had there been sales, you would have seen banking
21 activity reflecting continuous sales and yet to pay your
22 vendors as well. So it's a business operation that
23 Dr. Krishnamurthy couldn't have been running as a full
24 time employee this entire time of his -- the entire period
25 of this case, which dates back to 2004.

1 They also -- I've addressed the lab equipment
2 once again. It's just a fallacy and incorrect argument by
3 the plaintiff. They also talk about foreign entities and
4 what they -- he may or may not have been doing with
5 respect to a foreign partnership. And as our briefing
6 explained, to the extent there were sales in India, they
7 are not trademark infringements. Actually, the plaintiff
8 has no rights to the Life Technologies trademark in India.
9 They've been litigating in India for the past five or six
10 years. They lost that case. And I frankly believe and
11 based on the amount of effort they've put in this case
12 that they are trying to obtain discovery from
13 Dr. Krishnamurthy that may have helped them with their
14 case against a totally unrelated entity in India that's
15 also operating under the name, Life Technologies. I mean
16 the whole foreign entity argument is a smoke screen.
17 There was no sales shown at all by any of the foreign
18 entities and they never existed in the United States.

19 Their argument that, well, the fact that they
20 put them on a credit application, D/B/A Life Therapeutics,
21 one of the banks does not show that they had any
22 commercial activities in the United States and they don't
23 even represent that. It's just a reflection of a name
24 that Life Technologies USA was operating under. The
25 foreign entities are just totally irrelevant that the

1 plaintiff spent tens of thousands of dollars trying to
2 chase and we believe that it was essentially improper to
3 be doing it in this case because in parallel they are
4 litigating the same or similar case in India which they
5 lost.

6 Getting back to fees, we think the fees are just
7 entirely unreasonable in view of the lack of damages in
8 this case. As an example, the plaintiff spent
9 approximately \$147,000 on a single motion. That motion
10 for contempt. That's essentially what many trademark
11 cases in their entirety have been spent according to --

12 THE COURT: This ain't no ordinary case. The
13 plaintiff has been met every step of the way with
14 intransigence from your client in terms of complying with
15 orders to producing information, memory lapses about
16 information most people would remember. I mean this has
17 not exactly been an ordinary case from the standpoint of
18 the plaintiff.

19 MR. AITKEN: I believe it's not been an ordinary
20 case, but it's not been an ordinary case because the
21 defendant has been unable to produce the materials that
22 they seek. How can we produce evidence of sales when
23 there are none? How can we produce evidence of vendor
24 invoices when there are none? So defendant, they're
25 within their rights, they wanted to check to see if

1 they -- if there's some sort of vast conspiracy that he's
2 been able to hide. But at the end of the day, there is no
3 evidence that showing that there's any sales to these
4 people. The emails that they did obtain from some of the
5 people that were cooperative didn't show that there are
6 indications of sales between these various entities and
7 the defendant, including the Gmail account that we
8 provided the plaintiff with the password that Dr.
9 Krishnamurthy used. I mean there's just at the end --
10 there's no their there.

11 And sure, they can check and that's within their
12 rights to check. But in my opinion, when they see these
13 tax returns, it's by a single individual and his wife
14 operating out of a residence. That this case was not --
15 it shouldn't have been an unusual case. It should have
16 been a case that the tax returns would show a loss over
17 the 12-year existence, should have tempered the amount of
18 fees spent by the plaintiff in this case. But it didn't.
19 They were granted fees by Your Honor's previous default
20 judgment. So they thought, well, this is a blank check.
21 We'll just -- we will leave no stone unturned, which they
22 did not. And then we'll try to stick the bill with
23 Dr. Krishnamurthy.

24 And, sure, Dr. Krishnamurthy could have been
25 more forthcoming. But, you know, frankly, the motion for

1 contempt, we think we were correct with respect to that.
2 He was ordered to sign documents and to indemnify third
3 parties that he had no relationship to. Anybody that was
4 ever at a particular residence, they demanded every email.
5 So his former residence, they demanded all emails that
6 were ever associated with Dr. Krishna's further residence.
7 And they went and Dr. Krishnamurthy agreed to give these
8 his whoever bought the residence from him. And not only
9 that, he agreed to indemnify both plaintiff and the
10 service providers. We thought that was an improper order.
11 We think it was materially expanded from the original
12 order that Judge Connelly was presented in December. They
13 amended that. The Court never even saw the order before
14 it ordered Dr. Krishnamurthy to comply. We objected. We
15 lost. But we brought those objections and we brought the
16 request for protective order in good faith. We weren't
17 trying to be obstructive. We just wanted to curtail the
18 scope of discovery to something reasonable.

19 The court thought I guess because of past
20 indiscretions that there would be no restriction on the
21 discovery. The court essentially ordered that every
22 single email ever written by Dr. Krishnamurthy on 37 email
23 accounts for ten years was discoverable and relevant in
24 this litigation. I mean the scope of that is just and I
25 find it incredulous. I've never seen a discovery order

1 that wide and --

2 THE COURT: Let me ask you this. The plaintiff
3 is seeking to extend liability both for damages and
4 attorney's fees to not just the Life Technologies
5 corporate defendant, but also to Dr. Krishnamurthy and his
6 spouse. What is your position on that?

7 MR. AITKEN: We believe that neither of them
8 should be held to personal liability on this. They had
9 the opportunity to name Dr. Krishnamurthy as an individual
10 in this case. They have not. That was a purposeful
11 decision made by plaintiff years ago. They named him as a
12 trustee of the assets of the corporation. They
13 purposefully have not sought individual discovery from
14 Dr. Krishnamurthy.

15 We just heard Mr. Jaegers indicate, well, we
16 don't want to go after Dr. Krishnamurthy's personal bank
17 account because he's not part of this case. Yet, now they
18 decide, well, it would be convenient to try to hold Dr.
19 Krishnamurthy personally liable for this. Now that said,
20 we would -- there is some culpability as his role as the
21 president and in connection with the contempt motion where
22 he actually was personally held in contempt for a failure
23 to cooperate in connection with that order. We think that
24 there may be liability there. But we believe that no
25 liability should attach for the reasons set forth in our

1 motion, which is this Court has discretion whether or not
2 they should award fees in a close case like this which we,
3 frankly, think the Court in Caton may be appealed in view
4 of the scope of the order.

5 I'm really not at liberty to talk too much about
6 Mrs. Krishnamurthy. It's not my client. I've never met
7 her. I have not been in communications with her. I don't
8 know how to reach her. I don't think there's been any
9 showing that she's in any way liable for anything in this
10 case. By her signing a credit application back in 2007 or
11 2008, I don't think that would give her any liability in
12 this case.

13 I'd also point out that Dr. Krishnamurthy
14 attempted to follow the rules of the Maryland and with the
15 LLC. He filed dutifully his LLC tax returns, reported
16 income, losses and investments. He attempted to shut it
17 down. But when he saw that it was not going to be -- it
18 didn't make sense to pursue, Your Honor found his -- the
19 manner that he shut it down was incorrect. He should have
20 given notice to the plaintiff's counsel or the plaintiff
21 as being a creditor of the assets of the company. He
22 wasn't aware of that procedure at the time. He thought
23 that he could shut it down and the liability would rest
24 with the company.

25 At the end of the day, we don't think there

1 should be any liability with respect to either of the
2 individuals personally. And we don't think that the
3 plaintiff has made the case for it.

4 THE COURT: All right. Let me hear from Mr.
5 Jaegers again.

6 MR. JAEGER: Yes, sir, Your Honor. Thank you.
7 And I do want to refer the Court to that citation that I
8 mentioned while I was speaking earlier that I couldn't put
9 my fingers on and I didn't want to take too much time to
10 locate it.

11 THE COURT: All right.

12 MR. JAEGER: We were talking about Mrs.
13 Krishnamurthy and this actual dovetails nicely into what
14 Mr. Aitken was saying just now. With regard to Mrs.
15 Krishnamurthy's involvement in this case, I had referenced
16 to the Court a credit card that was in Life
17 Technologies -- was a Life Technologies credit card in
18 Mrs. Krishnamurthy's name. And, Your Honor, dealing with
19 our motion for damages at page 15 onto 16, but starting on
20 15, I do refer the Court to Exhibit 18 and that is HSBC
21 Bates number 489, which is a snippet from a MasterCard
22 business card monthly statement showing
23 Mrs. Krishnamurthy's name, J. Krishnamurthy. It lists an
24 account number and shows November 16 of 2013 with a
25 balance it looks like of a little over \$4,000. So my

1 point there is that not only was she involved, but she was
2 continuing to use corporate credit cards well into this
3 lawsuit, but certainly after the Court's March 13, 2012
4 order. And our discussion of her involvement in this case
5 there, Your Honor, starts there on 15 and goes to -- onto,
6 spills onto page 17. And she was as I mentioned writing
7 checks to her accountant as you'll see on page 16 of our
8 motion briefing there still at Exhibit 18, HSBC Bates
9 number 906.

10 So I think we're still continuing to manage
11 these accounts. Mrs. Krishnamurthy was writing checks.
12 She was an officer of this corporation and I believe Dr.
13 Krishnamurthy has previously testified she was a
14 secretary. I could be wrong on her position. But she did
15 have a position. She was part of this company. She was a
16 signatory on accounts. And not only that, she was a
17 signatory, an owner and a shareholder and a director of
18 the related entities that were here in the United States
19 doing business like Technologies doing business under
20 those three -- at least those three referenced ones.

21 And, Your Honor, if you will take a look at I
22 believe in our motion for damages, we included as
23 exhibits, the Articles of Association and Articles of
24 Management as exhibits to our motion for damages.
25 Exhibits 11 through 15 are the Articles of Association and

1 I believe it's Your Honor called -- a Memorandum of
2 Association is I believe what it's called. But it shows
3 both Dr. and Mrs. Krishnamurthy as managing -- as
4 partners, managing directors, maybe director, but they are
5 owners and those are the companies that are here in the
6 United States doing business. And I would have expected
7 to have seen some paper -- if our position is wrong and
8 they were not here doing business, I would have expected
9 some paper saying, you know, I, Dr. Krishnamurthy and Mrs.
10 Krishnamurthy we don't own these anymore. Here's my
11 signature on the shares or share certificates transferring
12 these interests away.

13 I would have expected to see -- Your Honor, also
14 part of our evidence shows that Dr. Krishnamurthy had
15 registered these three entities with the State of Maryland
16 as, you know, doing business as trade names. And I would
17 have expected something -- if they were not here doing
18 business in the United States, I would have expected to
19 see something that terminated those trade name
20 applications and grants from the State of Maryland to
21 these related entities that are here doing business
22 apparently in the United States and in this district.

23 But now Your Honor, I want to go back to one
24 thing that Mr. Aitken said that I -- I'll just say I
25 disagree strongly with regarding the tax returns.

1 Specifically with regard to the \$247,000 in equipment, our
2 point is that money had to have come from somewhere to
3 purchase that equipment. We don't have an explanation of
4 where it came from. Did he find it on the street and it
5 was -- and he didn't pay anything for it, but it was of
6 some value? We don't know. And it's our position as
7 plaintiff that funds came from somewhere, sales of
8 infringing products is our position, purchased a piece of
9 equipment that was \$247,000. It's listed on the tax
10 return. And, poof, the equipment goes -- just vanishes.
11 And so our position is we think it's a result of profits
12 from sales of infringing items. And it's Dr.
13 Krishnamurthy's burden to say no, this is where the money
14 came from and look at this document that proves that what
15 I say is correct. We have no document. In fact, we don't
16 even have a statement of where the money came from to
17 purchase the equipment.

18 But now, Your Honor, going back to the issue of
19 Mrs. Krishnamurthy and her involvement here, I don't know
20 why she has not shown up in this lawsuit. I've certainly
21 never met her. Apparently, Mr. Aitken neither has either.
22 But to the extent that she had an interest in this lawsuit
23 certainly as an interest, some kind of interest in not
24 becoming a part of any liability --

25 THE COURT: Mr. Aitken makes much of or asked me

1 to attribute some significance to the fact that neither of
2 them have officially been made defendants in this case.
3 What is your response to that?

4 MR. JAEGER: Well, Your Honor, they have not
5 been named, officially in this case and frankly, you know,
6 we had not done that after the summary judgment hearing.
7 I think it may have been too late to do it at that point
8 either. But our position, Your Honor, is that the
9 officers of a corporation can be held personally liable
10 for the company's trademark infringement. And I cite the
11 Court to one of the cases that we cited which is a
12 District of Maryland case, Microsoft versus Maryland
13 Micro, a 2003 case. "An officer can be liable if they
14 direct, control, ratify, participate in or is it the
15 moving force behind the infringing activity." Certainly,
16 that's Dr. Krishnamurthy across the board. But Mrs.
17 Krishnamurthy as well. Control, ratify, participate in.
18 Absolutely that applies to her. And an additional case
19 that we cited from the Second Circuit, Your Honor, Getty
20 Petroleum versus Barco. The defendant and the
21 Krishnamurthys can be held jointly and severally liable
22 for the attorney's fees, not just the underlying damages
23 for any trademark infringement.

24 So the fact that they are not named individually
25 as parties in this lawsuit, that does not mean that

1 liability cannot extend to them. And so from our
2 position, not only may they be held personally jointly,
3 severally liable, but I think the Court can do that
4 without a stretch or a leap of any kind. There's case law
5 authority there --

6 THE COURT: What about extending liability to
7 the wife when she has not been brought before this Court?

8 MR. JAEGER: Your Honor, her -- I'm sorry. Did
9 I cut you off?

10 THE COURT: No. That's all right.

11 MR. JAEGER: Her lack of participation in this
12 lawsuit is completely of her own doing. And like I said
13 earlier, we have served her with -- at the same home
14 address, we have served her with every -- paper copies of
15 every single document in this case. And surely she knows
16 about it and if she's been in -- well, Dr. Krishnamurthy
17 claims that she's been in India this whole time, Your
18 Honor. But the documents that we submitted show that
19 she's been back and forth.

20 There are documents -- we got a couple of emails
21 from Dr. Krishnamurthy's employer through our subpoena and
22 the consent form that we served on him that show emails
23 talking about Dr. and Mrs. Krishnamurthy going to visit
24 the get-togethers and barbecues here in the United States.
25 She's been back here and they've been -- I don't know what

1 their marital status really is. But certainly these
2 emails discuss in the 2013 I believe timeframe that she's
3 been back here and that they're going over to friends and
4 visiting. I find her lack of involvement in this case
5 purposeful in a very stick-your-head-in-the-sand kind of
6 way and I don't think that that exculpates her from any
7 liability in this case at all.

8 THE COURT: How much evidence of record is there
9 in this case of what you just said in terms of her
10 deliberately avoiding this case and avoiding any --

11 MR. JAEGER: Well, Your Honor, other than her
12 lack of participation, that's her not showing up. But if
13 Your Honor will allow me a moment, I will find the
14 citation that we made to -- I believe, Your Honor, it must
15 be in -- Your Honor, it is our motion for damages and I
16 cite the Court to page 17. Right toward the top and, Your
17 Honor, it looks like it's Exhibit -- I think I may have it
18 incorrectly labeled as Exhibit 10. No. It is correctly
19 labeled as Exhibit 10, USUHS and there's several citations
20 there and those citations show a series of email
21 conversations from December 2013 to 2014 in which he is
22 corresponding with others about attending get-togethers
23 with Ms. Krishnamurthy.

24 THE COURT: This is on page 17 of your --

25 MR. JAEGER: Page 17 of our memorandum.

1 THE COURT: Well, if I understand correctly, Mr.
2 Aitken is here today representing Dr. Krishnamurthy.
3 Correct?

4 MR. JAEGER: Yes, sir.

5 THE COURT: And the -- and I believe he's
6 appearing on behalf of the corporation as well. Is that
7 correct, Mr. Aitken?

8 MR. AITKEN: Technically, the corporation is
9 dissolved and I'm not sure if I can represent a company
10 that's dissolved. I'm representing Dr. Krishnamurthy as a
11 trustee of the assets of the corporation.

12 THE COURT: Then the bottom line is you do
13 represent the corporation. Although it may be in
14 dissolution, the directors of the corporation act as
15 trustees in dissolution. So that if it can be revived, it
16 would be against the corporation. If not, it would be the
17 assets of the corporation. It is held by the trustees in
18 dissolution under Maryland law. Right?

19 MR. AITKEN: My understanding of the Maryland
20 law is once it's dissolved, I can't represent them.
21 That's why all my pleadings have been --

22 THE COURT: I think if you look carefully, I
23 think you'll find that even if a corporation is in
24 dissolution, it can sue and be sued in that name. But
25 that the defense of the case or the prosecution of the

1 case as the case may be is done by the trustees in
2 dissolution on behalf of the corporation.

3 MR. AITKEN: I'm not certain of the law there,
4 Your Honor. I've been retained --

5 THE COURT: But you do not purport to represent
6 the wife?

7 MR. AITKEN: I do not represent the wife. I've
8 never spoken to her. I don't have the authority to
9 represent her.

10 THE COURT: All right. Counsel, let me tell you
11 this. I have another matter scheduled at 4 that's not
12 going to be too long. So why don't we take a -- we've
13 been going a long time anyway. So we need a break. Why
14 don't we recess this case? The other case involves a
15 defendant in custody who needs to be brought to the
16 courtroom. So I'll take a break. As soon as he comes in,
17 I'll hear the other matter. It will be fairly brief and
18 then we'll finish this up then. Okay?

19 MR. AITKEN: Thank you, Your Honor.

20 MR. JAEGER: Yes, sir. Thank you.

21 (Recess.)

22 THE COURT: I have before me today a series of
23 motions in the case of Life Technologies Corp. versus Life
24 Technologies Corp., a case that dates all the way back to
25 2010. The case is fairly extraordinary in terms of the

1 intransigence and multiple barriers that the defendant
2 corporation and its principal officer, Dr. Krishnamurthy,
3 put up in the path of the plaintiff's efforts to establish
4 its case and establish its damages for the claims that it
5 brought in its complaint before this court.

6 I have before me today a motion for an award of
7 damages. That's Numbers 175 and 176, motions for fees,
8 Numbers 187 and 188 and lastly a defendant's motion to
9 strike, 194, relates to the momentary untimeliness of a
10 filing. I'm not about to strike something that's been
11 filed within minutes of when it was due and I will,
12 therefore, deny the motion to strike, Number 194. And to
13 the extent that the filing was untimely under the
14 circumstances of a few minutes delay, I would grant an
15 extension of time to file it in any event. So we will
16 take care of that one rather quickly.

17 So I'm going to give you a decision on almost
18 everything that's before me today orally. I will request
19 that the plaintiff's counsel embody this in an order to be
20 submitted to me to be reviewed. But let me make the
21 overall determinations that will be incorporated into a
22 order that the plaintiff's counsel can prepare.

23 The history of this case is long and painful and
24 I'm not going to try to go through every aspect of it.
25 The case is a very mature case, let's put it that way. It

1 relates to claims made by the plaintiff corporation for
2 violations of the Lanham Act in the form of trademark
3 infringement and it has been before me. Relief has been
4 granted in part in this case. What was left was the what
5 would otherwise be a relatively simple determination of
6 damages. And but that task turned out to be quite an
7 extraordinary task in relation to what it should have
8 been. And the plaintiff was required to go through
9 extensive detective work that it should not have had to go
10 through, but for the intransigence of the corporate
11 defendant and its principal, Dr. Krishnamurthy. And he
12 has been represented by counsel. Counsel also represents
13 the corporation which now is in dissolution. But a common
14 counsel between the corporate entity and the principal or
15 president of the corporate defendant is obvious and
16 apparent in this case.

17 A plaintiff whose trademark has been violated is
18 entitled to recover the defendant's profits, damages and
19 costs. And if the violation is for a knowing and
20 intentional use of a counterfeit mark, courts are required
21 to award three times a defendant's profits or the
22 plaintiff's damages, whichever is the greater.

23 What has been brought before me today is a
24 heavily documented claim with the best that the plaintiff
25 can do under very trying circumstances, largely the

1 creation of Dr. Krishnamurthy's failure to cooperate in
2 any meaningful way with the discovery processes of this
3 court and the magistrate judge who presided over some of
4 the discovery scuffles in this case.

5 Whereas I find has taken place in this case, the
6 defendant impedes access to the true facts essential to an
7 accurate determination of its profits, the Court may use
8 inferential methods to determine the defendant's profits
9 and the plaintiff is only required to establish a
10 reasonable estimate of the defendant's sales. If it does
11 so, the burden then shifts to the defendant to prove any
12 costs or deductions from those gross sales. And if there
13 is not any such showing made, then the plaintiff is
14 entitled to collect profits equal to the defendant's gross
15 sales. These are principles of law that apply to this
16 that are not in dispute between the parties.

17 The Court is also authorized under Section
18 1117(b) to award prejudgment interest if an award is made
19 under that section and that would be at the federal short
20 term rate plus three percentage points which in this case
21 would be 3%.

22 The plaintiff has done the best that it could
23 under very trying circumstances to establish what it
24 believes would be the appropriate amount of damages. I
25 have reviewed the extensive documents, the memorandum of

1 the parties and the continued noncompliance by the
2 defendant with the discovery orders issued by this court.
3 And under the circumstances, I am required to as the
4 plaintiff has done in its moving papers to determine
5 profits from the available evidence. And an award can be
6 made on the basis of the plaintiff's reasonable estimate
7 of the defendant's sales.

8 In this case, the plaintiff has with its
9 documentary evidence and its calculations claims that the
10 defendant's sales are \$837,265.66. I've reviewed all of
11 this and I believe that that is in excess of what would be
12 reasonably attributable to the defendant. That does not,
13 however, mean that I do not believe that there are richly
14 documented sources of information here from which
15 inferences of profits, substantial profits can be made.
16 And I'll go through where I believe there are reasonable
17 amounts that be calculated. I'll give you the ultimate
18 mathematical conclusion and then take you through where I
19 got there.

20 I conclude that a reasonable estimate inferred
21 applying the principles that I enumerated as well as the
22 evidence that was -- notwithstanding the defendant's
23 intransigence developed would be a total of \$365,349.66 in
24 sales. I derive that with first with regard to the year
25 2002, the \$25,000 income reported on a Citibank loan

1 application. For the year 2005, \$105,000 again for income
2 reported on a CitiBank loan application. For 2007, \$2,000
3 reported as gross receipts on the defendant's 2010 federal
4 tax return. For the period 2008 to 2011, an analysis of
5 deposits would indicate a total of \$195,017.66, which is
6 derived from deposits into the defendant's corporate
7 accounts consisting of \$75,625 into an HSBC account.
8 \$61,321 into a Bank of America account ending in 1477.
9 And \$58,071.66 in a Bank of America account ending in
10 1464. I've reduced this amount by \$4,668 for costs
11 reflected on the corporate defendant's tax return for
12 2010. That brings us, as I said, to a grand total of
13 \$365,349.66.

14 The defendant has utterly failed to meet its
15 burden to prove any cost or deductions other than what
16 I've already recognized. And I believe that a trebling of
17 this award is appropriate and, therefore, I will award an
18 amount which trebles the amount that I concluded for a
19 total of \$1,096,048.98. Based upon the period of time
20 from the filing of the complaint through the end of last
21 month, I calculate prejudgment interest at the rate of 3%
22 for a total of \$61,332.16, which would bring a total award
23 of the treble amount plus the prejudgment interest of
24 \$1,157,381.14.

25 And let me now move to a motion for an award of

1 attorney's fees. That requires compliance with the
2 leading Fourth Circuit case of Robinson versus Equifax
3 Information Service. In this case I find that the
4 plaintiff has richly and comprehensively documented the
5 fees and expenses that it is claiming in this case. I'm
6 not going to diminish it at all. But I will recognize
7 that they are these 12 nonexclusive factors that the
8 courts embrace when applying a lodestar analysis to the
9 award of fees.

10 As the parties pointed out, this would have been
11 a relatively straightforward case with a fairly modest
12 award being imposed had the defendant proceeded the way a
13 normal defendant would under similar circumstances, but he
14 chose not to. And therefore, that substantially
15 aggravated and enhanced the legal costs incurred by the
16 plaintiff in the pursuit of a recovery in this case.

17 The fee and cost request in this case I conclude
18 is reasonable. The Troutman Sanders attorneys in this
19 case billed at a reduced rate. All of the rates but with
20 one minor exception are presumptively reasonable under our
21 Appendix B of our local rules. There has been a
22 comprehensive declaration from Royal Craig, an attorney
23 whose ultimate judgment is that the rates are and time
24 spent are both reasonable and fair for attorneys
25 practicing in this judicial district working on a case of

1 unusual complexity. The complexity of this case being
2 very substantially aggravated by the intransigence of the
3 defendant.

4 And an award for the amount claimed is a very
5 substantial award. But I find that it is richly
6 documented and deserved in this case because of the
7 actions taken by principally by Dr. Krishnamurthy to
8 obstruct and delay any pursuit of a damage award in this
9 case. I conclude, therefore, that the requested award of
10 \$555,555.35 in fees and costs is appropriate. And I will
11 impose that.

12 Finally, there's the request that I impose
13 liability in this case jointly on both the corporate
14 defendant as well as on Dr. Krishnamurthy and his wife. I
15 have no difficulty in imposing the award of both damages
16 and attorney's fees on the corporation, of course, as well
17 as on Dr. Krishnamurthy, who has been the mastermind of
18 everything that's happened before this court. He's been
19 acting in defiance of orders of this court. And I have no
20 difficulty in extending these awards to include him
21 personally. And I will direct that the ultimate judgment
22 in this case be against his corporation which they now
23 tell me is in dissolution, but also against him
24 personally.

25 I'm a bit troubled though about whether I have a

1 significant enough basis to make an award against
2 Dr. Krishnamurthy's wife. I'm not saying that there could
3 not be a basis for doing so. But on the basis of the
4 record now, her nonparticipation in this case, the fact
5 that she hasn't been named as a defendant, that she's not
6 been before the court in any other capacity such as
7 Dr. Krishnamurthy who has been before this court as a
8 person who's been required to respond to discovery
9 requests and has deliberately attempted to thwart the
10 plaintiff and the court in obtaining the requisite
11 information.

12 But I will -- I'm not going to extend the award
13 to the wife. Just to Dr. Krishnamurthy. That is without
14 prejudice to the right of the plaintiff should the
15 plaintiff desire to do so to file a motion that would
16 provide a more substantial basis to impose an award upon
17 her, potentially without naming her as party, although
18 that would be the cleanest way to do it. And but as I
19 said, I don't have her footprints all over the infringing
20 acts as well as the obstruction of the plaintiff in its
21 efforts to establish liability that I do with
22 Dr. Krishnamurthy, who has clearly been the mastermind of
23 this corporate entity trying to pretend to be the same
24 entity as the plaintiff and take advantage of its good
25 name and mark.

1 But it is potentially possible that she could
2 be -- this judgment could be extended to her. But on the
3 basis of what I have before me, I'm reluctant to do that
4 because of due process concerns.

5 I have no such concerns in the case of
6 Dr. Krishnamurthy who together with his counsel who
7 represents the corporation even in dissolution at this
8 time has fully participated in and fully understood what
9 was going on in this case and who attempted to thwart it
10 over and over again. So I have no difficulty in imposing
11 liability on him personally.

12 So I will ask that counsel for the plaintiff
13 prepare for me a proposed order that would embody these
14 rulings, which you can mention that you're incorporating
15 my oral comments which would be the basis for it. But I
16 believe that the motions before me other than the motion
17 to strike are well taken and all of them will be granted.
18 And I'll enter judgment as requested with the
19 modifications I made. Thank you very much.

20 (Proceedings concluded.)
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CERTIFICATE OF REPORTER

I, Lisa K. Banks, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the motions hearing in the case of the Life Technologies Corporation versus Life Technologies Corporation, et al., Civil Action Number RWT-10-3527, in said court on the 19th day of April, 2016.

I further certify that the foregoing 60 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 10th day of May, 2016.

Lisa K. Banks

Lisa K. Banks
Official Court Reporter

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